

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

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In the Matter of

AT&T Corporation, VLT Co. L.L.C., Violet License
Co. LLC and TNV (Bahamas) Applications for FCC
Consent for Grant of Section 214 Authority,
Modification of Authorizations and Assignment of
Licenses in Connection with Proposed Joint Venture
Between AT&T Corporation and British
Telecommunications plc

IB Docket No. 98-212

Reply Comments of Equant Network Services

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**Reply Comments of
Equant Network Services**

Equant Network Services hereby replies to the comments submitted in response to the license grant, modification, and assignment applications filed in connection with the proposed creation of a global joint venture between AT&T and British Telecommunications plc ("BT").¹

I. STATEMENT OF INTEREST AND SUMMARY

Equant is one of the world's leading providers of seamless international data network services to multinational businesses. The Company's customers are generally multinational

¹ See *AT&T Corporation, VLT Co. L.L.C., Violet License Co. LLC and TNV (Bahamas) Applications for FCC Consent for Grant of Section 214 Authority, Modification of Authorizations and Assignment of Licenses in Connection with Proposed Joint Venture Between AT&T Corporation and British Telecommunications plc*, Public Notice, DA 98-2412, IB Docket No. 98-212 (rel. Nov. 27, 1998).

organizations with substantial cross-border data communications requirements. Unlike its competitors – AT&T, BT, and other members of the major global telecommunications alliances – Equant’s portfolio of services does not extend to the full range of more “traditional” offerings, such as public switched voice services, carrier’s carrier services, or wireless services. Rather, Equant is uniquely focused on the provision of data-focused, seamless, end-to-end virtual private network services to multinational businesses. The Company offers these customers a wide variety of global communications services, including managed data network services (“MDNS”), frame relay services, LAN access services, corporate voice services, Internet/Intranet services, messaging and electronic commerce services, and related value-added services. Equant delivers these worldwide “solutions” over a high-performance international network with a global footprint that extends to more than 220 countries and territories.

Equant has a strong interest in the continued development of full and fair competition in the increasingly important market for global seamless services. Like many of the commenting parties, however, Equant is concerned that the merging of AT&T and BT’s international operations, coupled with AT&T’s proposed acquisition of IBM’s global data network, would thrust the joint venture into a dominant position and impede the development of competition in the nascent market for global seamless services. Equant therefore urges the Commission to adopt appropriate safeguards to ensure that competitors have access to the “building blocks” or “inputs” – such as transmission links and programming interfaces – necessary to assemble competitive offerings. In addition, the Commission should apply safeguards to the U.S. joint venture companies and AT&T to aid in the prevention and detection of anticompetitive conduct.

II. THE AT&T/BT GLOBAL VENTURE WOULD REDUCE COMPETITION AND INCREASE THE RISK OF ANTICOMPETITIVE CONDUCT

Multinational corporations have unique “supply requirements” that can only be satisfied by providers with “extensive global reach and very sophisticated network configurations and solutions.”² Accordingly, the FCC has recognized that only a handful of companies are currently capable of providing the data and voice services that large business customers demand over a seamless global network.³ And of these, AT&T and BT are already, *independently*, “world leaders in this market.”⁴ Equant therefore agrees with many of the commenting parties that the proposed AT&T/BT venture would not promote competition in the provision of global seamless services to multinational corporations.

To the contrary, this combination would only serve to thrust the joint venture into a dominant position in the emerging market for global seamless services. Through the combination of AT&T and BT’s international operations, the joint venture would be in a unique position to achieve significant economies of scope and scale from its resources, its control over many “thin” international routes, as well as its dominant share of the market for global seamless services.⁵ Smaller rivals of the venture simply would not be able to realize these economies. Moreover, due to the substantial resources that many multinational corporations have already

² See Cable & Wireless Comments at 12.

³ See *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, FCC 98-225, CC Docket No. 97-211, at ¶ 126 (rel. Sept. 14, 1998); *The Merger of MCI Communications Corporation and British Telecommunications plc*, FCC 97-302, GN Docket No. 96-245, at ¶ 92 (rel. Sept. 24, 1997).

⁴ See Cable & Wireless Comments at 12.

⁵ See Cable & Wireless at 11-14; GTE Comments at 7-9.

invested in their relationships with AT&T and BT, the significant number of customers bequeathed to the joint venture would be extremely reluctant to switch to new service providers.⁶

Given these factors, new entrants could be deterred from even attempting to assemble the capital and infrastructure necessary to compete in the already concentrated market for seamless services.

The risk of competitive harm posed by the combination of AT&T and BT would be exacerbated by AT&T's proposed acquisition of IBM's global networks business. Not only would this acquisition remove a significant competitor from the market for global seamless services, but it also would expand the AT&T/BT venture's already sizable customer base. According to AT&T, the acquisition would add "several hundred large global companies" and "tens of thousands of mid-sized businesses" to the venture's customer base.⁷

To further compound the risk of competitive harm, the formation of the venture also would lead to the elimination of additional competitors from the market for global services. AT&T's decision to partner with BT will lead to its abandonment of the WorldPartners alliance. Without AT&T, the alliance – which the Commission has identified as one of the few significant providers of seamless services – will likely collapse. Given their prior relationship with AT&T, former WorldPartners such as Telstra would appear to be natural partners for the AT&T/BT

⁶ See Cable & Wireless Comments at 12.

⁷ *AT&T to Acquire IBM's Global Network Business for \$5 Billion*, AT&T Press Release at 2 (rel. Dec. 8, 1998).

venture.⁸ In short, the union of AT&T/BT would lead to further in the emerging, but increasingly important, market for global seamless services.

III. THE COMMISSION SHOULD IMPOSE PRO-COMPETITIVE CONDITIONS ON THE AT&T/BT GLOBAL VENTURE

In order to ensure that the AT&T/BT venture does not impede the development of competition in the nascent market for global seamless services, the Commission should impose pro-competitive conditions on AT&T and the U.S. joint venture companies. More specifically, the Commission should adopt measures to ensure that other service providers have access to the inputs necessary to assemble competitive offerings. In addition, the Commission should adopt competitive safeguards to aid in the prevention and detection of anticompetitive conduct.

Access to Transmission Facilities. Many new entrants into the growing market for seamless services will rely on carriers for the transmission links and distribution services they need to assemble service platforms and to reach their customers. Because AT&T is the largest provider of such circuits in the U.S. and, indeed, the dominant provider on certain international routes, many of the joint venture's competitors will be forced to lease circuits from AT&T or the joint venture's subsidiaries.⁹ Experience in the United States, however, has demonstrated that AT&T often prices these critical inputs in a manner that precludes its rivals from assembling services that are competitively priced with AT&T's own offerings. If allowed to pursue this

⁸ See GTE Comments at 11 ("Telstra's Chief Executive Officer has stated that AT&T and BT have 'both sent signals that they want us to be significant partners in this alliance.'").

⁹ See Federal Communications Commission, 1997 International Telecommunications Data, Table F (rel. Dec. 1998). BT's dominant position in the U.K. will give the joint venture additional opportunities to use the provisioning of private line services to subject competitors to unfair pricing pressure.

strategy, the joint venture would be able to diminish the ability of some providers to serve multinational corporations. The competitive imbalance created by this pricing strategy would only be aggravated as the AT&T/BT venture rolls out new offerings with which competitors could find it difficult to compete using circuits leased from AT&T and the joint venture subsidiaries.¹⁰

To avoid this result, the Commission should take steps to ensure that competing providers have access to the facilities necessary to construct their own service platforms. More specifically, the Commission should require AT&T and the global venture subsidiaries holding Section 214 authorizations to offer competing providers non-discriminatory access to the transmission links used in providing the venture's services. Doing so would enable competing providers to "match" offerings constructed by the AT&T/BT venture and would ensure that they are free to design and implement their own seamless services. This, in turn, would lead to reduced prices, expanded choices, and increased innovation.

There is ample authority for requiring AT&T and the U.S. joint venture subsidiaries to provide non-discriminatory access to transmission services. First, as recognized by Star Telecommunications, two of the joint venture's subsidiaries have applied for authority to operate as international common carriers pursuant to Section 214 of the Communications Act "and, as

¹⁰ According to AT&T and BT, the joint venture plans to offer customers an unparalleled range of new seamless global products and services. See *AT&T and BT Form \$10 Billion Global Venture to Serve Customers Around the World*, AT&T Press Release at 1 (rel. July 27, 1998). The fact that competitors would not be able to match many of the joint venture's offerings would provide the venture with additional opportunities to place anticompetitive pricing pressure on rivals. For example, the joint venture could bundle services not available from other providers with services subject to competition. The venture could then allocate a relatively "high" price to the venture-only services and relatively "low" prices to services also offered by rivals. Doing so would make the joint venture's offerings appear more attractive than those of its rivals.

such, will be governed by . . . Title II of the Communications Act.”¹¹ Among other things, this means that these carriers must provide the basic telecommunications services – namely the “underlying service components” used in providing the venture’s IP-based services – to AT&T, BT and competing providers of seamless global services on a non-discriminatory, tariffed basis.¹² In the license applications, AT&T and the global venture subsidiaries have implied that they will provide such nondiscriminatory access.¹³ The Commission should require AT&T and the joint venture subsidiaries to honor this pledge.

Second, the Commission currently requires all facilities-based carriers providing information services – regardless of whether they have market power – to unbundle the underlying transmission capacity, and make that capacity available to competing information service providers at non-discriminatory rates, terms, and conditions.¹⁴ Like information services, global seamless services “are dependent on the common carrier offering of basic services”, which serve as the “building blocks upon which” global services “are offered.”¹⁵ The imposition of a facilities unbundling requirement in the global seamless services market thus would serve the

¹¹ Star Telecommunications Comments at 9.

¹² See 47 U.S.C. §§ 201, 203.

¹³ See Application at 8 n.9.

¹⁴ See *Amendment of Section 64.702 of the Commission’s Rules and Regulations (Second Computer Inquiry)*, 77 F.C.C.2d 384, 484 (1980). To the extent that any of the joint venture’s offerings constitute information services, the joint venture should be required to unbundle the transmission capacity underlying the offering and make it available to competing providers on a non-discriminatory basis.

¹⁵ *Id.*

same pro-competitive purposes – the promotion of competition and prevention of leveraging behavior – that it currently serves in the information services market.

Third, imposing an unbundling condition on AT&T and the joint venture subsidiaries would serve the goals of Section 706 of the Telecommunications Act. That section directs the Commission to use its authority to adopt measures to promote the availability of advanced telecommunications services to all users, including business users.¹⁶ The term “advanced telecommunications services,” the Commission has explained, refers to IP-based and other data transmission services such as those provided by Equant.¹⁷ Consistent with the congressional directive embodied in Section 706, the Commission should ensure that Equant and other service providers have non-discriminatory access to the transmission links necessary to provide advanced, IP-based services and related services to their customers.

Open Standards. In its comments, GTE warned that the AT&T/BT venture would be able to leverage its customer base to limit the availability of information technology products to its competitors. As noted above, AT&T has proposed to purchase IBM’s global network and the venture plans to develop an IP-based global network.¹⁸ Services would be provided over this network using software programs that are written using specific Application Programming Interfaces (“APIs”) that would be unavailable to other providers.¹⁹ As explained by GTE, the

¹⁶ See 47 U.S.C. § 157 note.

¹⁷ See *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, FCC 98-188, CC Docket No. 98-147, at ¶ 35 (rel. Aug. 7, 1998).

¹⁸ See *AT&T and BT Form \$10 Billion Global Venture to Serve Customers Around the World*, AT&T Press Release at 1 (rel. July 27, 1998).

¹⁹ See GTE Comments at 4.

venture would be able to leverage its control over these APIs and its role as the dominant purchaser of software applications to control the development of programs written for its IP-based network.²⁰

Given that IP-based architecture will play an increasingly important role in the delivery of global solutions to multinational corporations, this situation could place the joint venture's competitors at a distinct – and unfair – disadvantage. First, the joint venture's large customer base would induce software companies to write programs designed to run exclusively over the venture's network. The ready availability of a wide variety of software applications, in turn, would attract even more customers to the venture's correspondingly wide variety of services. To the extent that competitors would be excluded from the APIs and thus the software applications used by AT&T/BT, they could have difficulty matching the venture's service portfolio.²¹ Second, even if disclosed, the joint venture's ability to control the modification and development of the APIs could pose a continuing risk of anticompetitive conduct. For example, the joint venture could gain an advantage by not giving rivals adequate advance notice of future modifications to the programming interfaces. This, in turn, could delay rivals from rolling out new services that rely on software written to the modified APIs.

²⁰ *See id.*

²¹ *See* GTE Comments at 4.

To be sure, the software applications that the joint venture would use to provide IP-based services over its network would have “information service” characteristics.²² However, these capabilities would be “basic in purpose” and used “to facilitate the completion of calls through utilization” of the venture’s facilities.²³ As such, these applications could appropriately be classified as “adjunct-to-basic” services.²⁴ A non-discrimination requirement should be applied to common carriers, such as AT&T and the joint venture subsidiaries, that use these applications to provide international telecommunications services. Moreover, the venture should be required to provide rivals that use these applications with adequate advance notice of modifications that would affect the rival’s ability to provide service.

Competitive Safeguards. In their comments, several of the commenting parties suggested that, if the AT&T/BT venture is approved, additional competitive safeguards should be imposed on AT&T and the venture companies holding Section 214 authorizations. Equant agrees.

Transparency Requirements. The global venture applications fail to disclose the terms on which AT&T, BT, and any subsidiaries would have access to the common carrier services

²² These capabilities could not be classified as “information services” because the statutory definition of this term specifically excludes capabilities that are used for the “management, control, or operation of a telecommunications system or the management of a telecommunications network.” 47 U.S.C. § 153(20).

²³ *Implementation of Section 255 of the Telecommunications Act of 1996, Access to Telecommunications Services, Telecommunications Equipment, and Customer Premises Equipment by Persons with Disabilities*, 13 FCC Rcd 20391, 20411 (1998).

²⁴ *See Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934*, 11 FCC Rcd 21905, 21958 (1996) (finding that all services previously classified as adjunct-to-basic should be classified as telecommunications services).

provided by the joint venture.²⁵ This omission should not be overlooked. As the Commission has recognized, the provisioning and maintenance of services and facilities can be a significant source of discrimination that can be used to degrade an unaffiliated provider's quality of service.²⁶ To prevent discrimination and aid the Commission and competing providers in detecting such conduct, AT&T and the joint venture subsidiaries holding Section 214 authorizations should be subject to comprehensive disclosure requirements. In particular, these carriers should be required to file quarterly reports providing information concerning: (1) the rates for all basic network services and facilities procured from the venture companies; (2) the actual and average elapsed time between ordering and delivery; and (3) the average and elapsed time between the time a fault is reported and the time service is restored.²⁷

Nondiscrimination. Equant also agrees with several of the commenting parties that AT&T and the global venture subsidiaries should be subject to the No Special Concessions Rule.²⁸ Indeed, the long-standing relationships enjoyed by AT&T and BT with many foreign carriers and their control over massive amounts of "pooled" international traffic would give the venture an unprecedented ability to extract significant concessions from carriers on the foreign end of virtually all international routes where competition has not yet taken root. Because the joint venture would already enjoy significant advantages derived from its scope and scale, the

²⁵ See Star Telecommunications Comments at 2.

²⁶ See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Market Entry and Regulation of Foreign-affiliated Entities*, FCC 97-398, IB Docket Nos. 97-142, 95-22, at ¶ 277 (1997) ("*Foreign Participation Order*").

²⁷ See *id.* at ¶ 280.

²⁸ See MCI Comments at 9; Level 3 Communications Comments at 13; Star Telecommunications Comments at 8.

prospect of exclusive deals between the joint venture and dominant foreign carriers could pose an unacceptable risk of harm to the long-term development of competition in the nascent market for global seamless services. Accordingly, the Commission should specify that the rule prohibits AT&T and the venture subsidiaries holding Section 214 authorizations from accepting:

- any exclusive marketing or operating arrangements with dominant foreign carriers;
- any exclusive arrangements that would prevent a foreign carrier from providing sufficient transmission capacity or distribution services to meet the needs of competing providers of global seamless services;
- distribution or interconnection arrangements that are not made available to other providers of seamless service providers;
- any information not publicly available about the operation of any foreign carrier's network services that would affect the provision of global seamless services;
- preferential pricing or treatment in the provisioning and maintenance of facilities and services used in providing global seamless services; or
- exclusive transiting arrangements not made available to other providers.²⁹

In addition, on a quarterly basis, the Commission should require AT&T and the joint venture subsidiaries holding Section 214 authorizations to certify that they have not accepted any special concessions. Moreover, to ensure that the global venture does not accept any "indirect" special concessions, the Commission should require AT&T to obtain from BT and the U.K. joint venture subsidiary written commitments stating that they will not provide or obtain any special

²⁹ See *Foreign Participation Order* at ¶ 165.

concessions from any foreign carriers for the benefit of AT&T or the U.S. joint venture subsidiaries with respect to the provision of global seamless services.³⁰

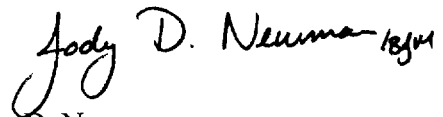
CONCLUSION

If the Commission approves the applications filed in connection with the joint venture proposed by AT&T and BT, it should adopt the safeguards described above in order to ensure that other providers of global seamless services are not placed at an unfair competitive disadvantage.

Respectfully submitted.

EQUANT NETWORK SERVICES
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By:

A handwritten signature in black ink that reads "Jody D. Newman" followed by a date "1/25/99".

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³⁰ See *Sprint Corporation*, 11 FCC Rcd 1850, 1870 (1996) imposing a similar requirement on Sprint in connection with its relationship with France Telecom and Deutsche Telekom).